

# Home Health & Hospice Newsletter

March 2003



Indiana State  
Department of Health

Volume 4  
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## Home Health Rules

Since the last issue of the Home Health and Hospice Newsletter (March 2002), several state and federal rules have become effective, and are reviewed on pages 1 and 2 of this newsletter. This rule update will begin with the Indiana Administrative Rules.

Effective April 18, 2002, licensed home health agencies are required to meet the Indiana Administrative Rules, 410 IAC 17. These rules revised the previous rules adopted in 1998.

The key changes in these 4/18/02 rules include:

- New section on patient rights in 410 IAC 17-12-3,
- Revised section on quality assurance and five day notice in advance of discharge in 410 IAC 17-12-2,
- Need for supervisory home visit by RN or therapist now must be at least every thirty days in 410 IAC 17-14-1(e)(12), and
- Change in requirements of Professional Advisory Committee and Clinical Record Review.



Effective January 10, 2003, the Executive Board of the Indiana State Department of Health adopted an emergency rule to ensure that FSSA approved providers that provides only developmental disabilities waiver services are exempt from the home health agency licensure rules. The exclusion, which is added to 410 ISC 17-10-1 k, states: “(12) An entity approved by the Bureau of developmental disabilities services as a provider of services subject to Family and Social Services Administration regulation pursuant to 460 IAC 6 and who serves only individuals with developmental disabilities placed pursuant to IC 12-11-2.4-4.” This exclusion will apply only to separate DD entity, and ISDH staff may examine DD patient records of licensed agencies.

### Finding HHA Rules on Internet (with Acrobat Reader installed)

On Locator bar, type [www.in.gov/legislative/](http://www.in.gov/legislative/)

1. On left margin, click on Law and Administrative Rules

#### To find DD Exemption to HHA rules

2. On right column, click on Indiana Register, click on 3/1/03, Vol. 26, No. 6
3. Scroll Down to Emergency Rules, and print off # 03-01(E) as a PDF

#### To Find Existing HHA Rules (<http://www.in.gov/legislative/register/index-26.html>)

4. In locator box change "26" to "25"
5. Click on May 1, 2002 Indiana Register, ...Number 8
6. Scroll down to Title 410 and print off # 0-159 as a PDF

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### Home Health Survey Protocol Enhancements For Federally Certified Agencies



CMS has issued new guidelines to refine the process used to survey federally certified agencies. Surveyors will now use the agency's OBQM (Outcome Based Quality Monitoring) and OBQI (Outcome Based Quality Improvement) reports to identify areas of focus in the home health agency survey. Use of the OASIS data is expected to enhance the consistency of the survey process. The surveyors will have access to the agency OBQM/Adverse Event Outcome Report and Patient Listing, OBQI/Outcome Report, OBQI/Case Mix Report, HHA Provider/Submission Statistics by Agency Report, and HHA Provider/HHA Error Summary Report by the HHA. The surveyors will utilize these reports in their pre-survey preparation to identify areas of focus.

The surveyor will identify whether any agency patients are listed on the OBQM Adverse Event Outcome Report in the outcomes of 1) Emergent Care for Injury Caused by a Fall or Accident at Home and 2) Emergent Care for Wound Infections, Deteriorating Wound Status. The surveyor will look at 6 additional areas to determine whether the agency value for that area is meets specified criteria. If so, these areas will also be targeted.

Ten outcomes from the OBQI Outcome Report have been identified for possible focus. For the outcome to be an area of focus, the agency must have at least 30 eligible cases, a large and unfavorable magnitude of difference between the HHA and the national reference rate, and statistically significant (one or two asterisks). In addition, the OBQI case mix report will be reviewed for acute conditions or diagnoses that are statistically significant are 15 percent higher than the national reference rate. Patients with diagnoses from the identified conditions, up to 3 conditions may be targeted, may be selected as a focus area.

The Submission Statistics by Agency Report will help the surveyor determine whether the agency is submitting data less often than monthly and/or whether the agency has greater than 20 percent of their records rejected in accordance with Worksheet instructions. If this probe is triggered, the surveyor will investigate compliance with OASIS transmission requirements through the partial extended survey process.

The surveyor will review the Error Summary Report to identify if the agency has Error 102 (at or above 20%), Error 262 (at or above 20%), Error 1003 (at or above 10%), and Error 1002 (at or above 10%). If these thresholds are met, then the surveyor will further investigate this area through the partial extended survey process.

Notice: The final OMB approval notice was effective January 22, 2003, for the reduced burden OASIS. Agencies have a choice to implement the reduced burden reduction OASIS now or wait until the fall; however, agencies are required to implement the reduced burden OASIS by October 1, 2003.

Clinical record review and home visits will target patients identified using the criteria from these reports. OASIS transmission will also be examined if the agency meets those criteria. Any area for which the identified criteria are not met will not be a focus area the surveyor will utilize during the survey.

Compliance decisions will not be based solely on the OASIS data. These reports will be used as a tool to guide the survey process and identify areas for additional investigation. Aspects of patient care must be evaluated and substantiate or support any findings of non-compliance with the condition of participation.

**Notice:** The final OMB approval notice for reduced burden OASIS was effective January 22, 2003. Agencies have a choice to implement the reduced burden reduction OASIS now or wait until the fall; however, agencies are required to implement the reduced burden OASIS by October 1, 2003.

## Repeat of Federal Questions and Answers

The following are questions from a hospice conference call with Indiana Providers. The written response to questions is provided below:

As in all questions and answer sections, ISDH is providing the materials contained in these questions and answers as a general information resource. It is not legal advice or opinion. The answers given here may not specifically apply to all agencies. Changes to rules or regulations after January 31, 2003 may change this written response. Agency policy, procedure or contracts may be more stringent than the rule or regulation. If so, the agency will be required to follow its own more stringent standards. The CMS/ISDH response is intended to apply only to the questions asked.

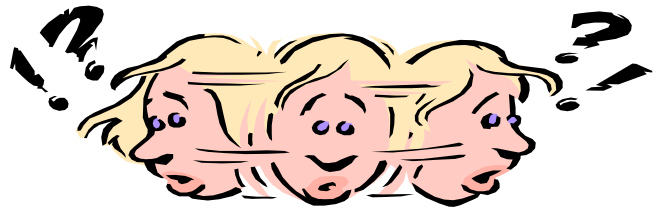
### **Scenario one:**

The hospice provider desires to provide "massage therapy" by a certified person to provide massage therapy out of their volunteer program to the hospice patients.

**Question 1, part A:** Is the volunteer required to be certified or trained (as a massage therapist) in this area according to state certification in order to be a volunteer who may provide this to hospice patients?

**CMS Response:** The interpretive guidelines say that "Volunteers who are qualified to perform professional services should meet all standards associated with their specialty area. If licensure or registration is required by the state, the volunteer must be licensed or registered."

In order for the hospice to offer massage therapy as part of its volunteer services, the hospice must ensure that the massage therapist has been trained to do massage therapy and must meet the individual state's licensure or certification for massage therapy, if it exists. The hospice should have policies and procedures in place governing the provision of massage therapy if it provides this service. In addition, the hospice must have policies and procedures in place to identify what standards a



massage therapist should meet in order to render that service to hospice patients. (418.50(b) (2) (3), 418.70(a), 418.70(b), 418.72, and 418.72(b))

Based on the plan of care provisions, the IDG should approve any provision of massage therapy in the patient's plan of care before it is provided so that the IDG can evaluate the effectiveness of providing this therapy as an adjunct to other therapies provided for pain or symptom management.

**Question 1, part B:** Can the "certified massage therapist" train and competency test a Home health aide to provide this in the home health aide visits?

**CMS Response:** No. Training and competency testing of home health aides is required to be performed by a registered nurse. (See 42 CFR 484.36)

**Question 1, part C:** Can the certified massage therapist train the RN to oversee a home health aide to do?

**CMS Response:** NO

## Federal Questions and Answers (Continued)

**Question 1, part D:** Can a home health aide or registered nurse be trained to do this service if the service is to be done by a "certified person in our State". [A hospice asks if this is something currently Indiana requires a special certification. The hospice wants to know current status, prior to any action that may be proposed in the Indiana General Assembly.]

**CMS Response:** Nurses are permitted to provide services within their scope of nursing practice and in accordance with State law. The RN may instruct the home health aide to perform those duties that are ordered in the plan of care and that the aide is permitted to perform under State and Federal law.

**ISDH Response:** The nurse would also need to follow competency guidelines within the nurse practice act and within their scope of nursing practice and in accordance with State law.

### **Question 2:**

There were two questions regarding pet therapy visits, music therapy etc. in the hospice volunteer program.

**Question 2, part A, Scenario one:** The hospice contacts the organization that does pet and music therapy and the organization goes to the nursing home and **All** nursing home patients may or may not participate (not specific to Hospice patients)

**ISDH Response pending CMS response:**

ISDH shared that if this is something the hospice offers to the entire nursing home by another organization and not by the hospice,

- then it really isn't in the hospice volunteer program and
- it isn't provided to the individual hospice patient under the POC or IDG,

So, a volunteer note is not necessary or an entry included in the POC.

(Was this correct?)

**CMS Response** – Yes

**Question 2, part B, Scenario two:** The other is a hospice that provides this (pet or music) therapy to individual patients in the Hospice program.

**ISDH Response pending CMS response:**

If the hospice sends out the pet or music volunteers to the individual hospice patients after asking if the patient wanted this service, then the hospice needs to treat the pet or music therapy like a volunteer visit and include this in the service in the patients plan of care with the IDG involvement and document the visit.

(Was this correct?)

**CMS Response** – Yes

**Question 3:** Also, one hospice asked about Home health aides administering medications (What is the CMS take?)

**ISDH Response pending CMS response:**

ISDH says that they may assist according to Nurse Practice Act guidelines for RN delegation. Assist is not administering or setting up medications.

**CMS response:** We agree that administering medications is not an activity that a home health aide is permitted to perform - administering is not assisting.

### **Caregiving Conference**

The annual caregiving conference is scheduled as one day events in five locations statewide in March or April. The workshop series is to encourage, educate and equip caregivers, people with disabilities, professionals, and emergency personnel concerning caregiving issues during difficult times. A pamphlet has been enclosed.



### **Help to the Caregivers**

For tips, links, and books for the caregivers of your clients, you may want to review [www.RubMyNeck.com](http://www.RubMyNeck.com). The site contains a basic overview of home health care and ways for families to avoid medication errors.

### **Informal Dispute Resolution**

The Acute Care Division has revised its informal dispute resolution policy (IDR) to be compatible with the ISDH Long Term Care Division. The Regulatory Services Informal Dispute Resolution Record (State Form 50057 (R2/1-03)) has been enclosed in today's mailing. The form is also available on the web at <http://www.in.gov/isdh/regsvcs/acc/forms/index.htm>.

### **Burden Reduction Question and Answer**

Question: Must RFA 2 and 10 be completed, but the data not submitted? Or is OASIS not completed for RFA 2 and 10?

Answer: The patient who receives only one skilled visit from the home health agency must receive a comprehensive assessment, but OASIS data are not required to be collected (or transmitted). An agency may use a comprehensive assessment clinical documentation of its own choosing for this purpose. If the patient is a Medicare patient for whom reimbursement will be requested, the agency must encode and transmit an OASIS start of care assessment (RFA 1) so that a HIPPS code can be generated. Since no discharge assessment is required, the patient will not be closed out of the system and the record will continue to exist on the state database and on agency reports. You may choose to complete a discharge assessment if you want to remove the patient from the reports

### **OBQI Improvement Training**

New Conditions of Participation are planned for release later this year. One change in these new conditions of participation is reported to include the requirement of the use of the OBQI reports in the agency's Quality Improvement Program. Health Care Excel, the Indiana Medicare QIO (Quality Improvement Organization), is offering training to assist Home Health Agencies to evaluate their care and make appropriate changes. The QIO will conduct FREE training sessions at various locations in Indiana. Attendees will be instructed on the OBQI methodology and be able to return to their agencies with the resources to educate staff members. Details of the program and registration for the FREE two-day training can be found at <http://www.hce.org>. Please take advantage of this FREE opportunity to learn how to improve the care that your agency provides. (see pamphlet enclosed)



### **Ways to Improve Filing Plans of Correction**

Occasionally, every home health agency or hospice will need to file a plan of correction to inform the ISDH how it plans to correct problems found during the survey process. The following may assist you in completing these plans.

**ERROR:**

**MUST COMPLY WITH  
CMS STANDARDS**

#### **Top Seven Reasons that Plans of Correction Are Rejected**

1. Did not answer all four questions
2. Did not sign and date State or Federal front page
3. Correction date over 30 days of survey without valid explanation
4. Response referred to another tag
5. Plan of Correction signed by staff without proper agency authority to sign
6. No Plan of Correction submitted because the agency requested an Informal Dispute Resolution IIDR)
7. Plan of Correction not on proper form (CMS 2567 or State Form)

#### **Helpful hints to get Plan of Correction accepted on first mailing:**

1. **Write the four questions on POC and answer them, i.e.:**
  - How are you going to correct the deficiency?
  - How are you going to prevent the deficiency from recurring in the future?
  - Who is going to be responsible for number 1 and 2 above; i.e., administrator, director, etc.?
  - By what date are you going to have the deficiency corrected?
    - You must provide a specific date the deficiency will be or has been corrected (example: June 30, 2000 or 06-30-00) in the “COMPLETION DATE” column. The correction time should be within thirty (30) days from the date of the survey.
    - If the nature of the deficiency precludes completion within the above stated thirty (30) days, the Plan of Correction may be written in incremental phases.
2. **Remember to sign and date *BOTH* Federal and State Forms prior to submitting.**
3. **Dates of Correction should be able to be completed within 30 days from survey. The exception to this usually results in construction, or something that will require additional time etc. Refer to letter directions below.**
  - By what date are you going to have the deficiency corrected?
    - You must provide a specific date the deficiency will be or has been corrected (example: June 30, 2000 or 06-30-00) in the “COMPLETION DATE” column. The correction time should be within thirty (30) days from the date of the survey.
    - *If the nature of the deficiency precludes completion within the above stated thirty (30) days, the Plan of Correction may be written in incremental phases.*
4. **Do not refer to other tags. Each tag requires a written response to all four questions.**

### Plans of Correction, Continued

5. The person signing should have the authority to implement the changes, or those individuals that ISDH has on record as the Administrator, Alternate Administrator, Supervising Nurse, or Alternate Supervising Nurse. Make sure it is dated.
6. Plans of Correction are a different process from your Informal Dispute Resolution. The regulation mandates submitting a POC for compliance. There are no federal or state mandates for an Informal Dispute Resolution.
  - o **Solution:** If the agency does not agree, the agency may put on their plan of correction that they do not agree, but because they wish to be in compliance ... they are submitting their plan of correction.
7. Place the Plan of Correction on the State form or the CMS 2567 as directed. This is the legal document and the responses should be placed on the actual form.

#### Other Helpful suggestions:

- o Remember that your plan of correction is a public document. Do not put confidential patient information or inappropriate statements about your complainant in the response.
- o Keep your responses simple, short, and concise. Keep it simple. This can not be stressed enough. ISDH does not need your complete policy and procedure, if the agency feels they need to explain this, send the policy. Keep the responses simple and short. **Attachments are usually submitted for "credible allegation,"** not with standard deficiency tags.
- o Call Lana Richmond at ISDH if you are not sure or have never completed a plan of correction. Have your survey ready to review.
- o Respond to the rule (tag cited), not each finding.

#### Example tag from a survey conducted on 1/02/03:

**State tag cited: "A registered nurse, or therapist in therapy only cases, shall make the initial visit to the patient's residence and make a supervisory visit at least every thirty (30) days, either when the home health aide is present or absent, to observe the care, to assess relationships, and to determine whether goals are being met. Findings include..."**

#### Example of acceptable response:

ISSUE	ACCEPTABLE RESPONSE
How the deficiency was corrected:	All staff that provides supervision of home health aides was in-serviced on the rules for supervisory visits and the agencies policy for supervision. Unable to correct cited supervisory visits. Future supervisory visits will be in compliance from 2/02/03.
How we plan to prevent the deficiency from recurring in the future:	Supervisory visits have been added to the agencies QA and will be audited for compliance to the rules. Appropriate action will be taken by the Administrator if noncompliance is still found.
Responsible Agency person:	The Administrator is responsible for this plan of correction
Date the deficiency corrected:	2/02/03



### Annual Activity Reports

ISDH has enclosed its request for 2003 annual utilization reports, and reminds you of the March 1, 2002 deadline for filing 2002 utilization.

### Nurse Aide Registry

- The nurse aide registry tracks the standings of 9,165 registered home health aides and 114,008 other personnel including CNAs and QMAs.
- ISDH expects to resume the nurse aide verification system at 317/233-7612 by May 1, 2003. Until that date, continue to fax the name and social security number to ISDH, or utilize the Access Indiana Premium service.
- Nurse aide investigations of abuse, neglect, and misappropriation of property continue. There were over 15 RHHAs and over 600 CNAs with a permanent ISDH finding of abuse, neglect, and/or misappropriation of a patient's property. You are reminded that your agency may not employ an aide with an ISDH finding, and should verify the aide's standing prior to employment.

You may request ISDH begin an investigation of allegations of abuse, neglect, and misappropriation of an agency home health aide by faxing the name of the aide, the patient, and the circumstances of the allegation to ISDH.

- ISDH has enclosed its annual request for each agency to notify the state of
  - Renewal of the CNA's expiration date of any employed CNAs, and
  - The hours of continued education of any home health aide.

ISDH has enclosed an revised CD-ROM that include improvements to both the CNA and RHHA programs that recognizes all prior information stored in your hard drive. You should send diskettes with this information after 4/1/03.

### Telephone Directory by Topic

#### Plans of Correction Survey Process

Lana Richmond 317.233.7742

#### Provider Changes, Licensure, Initial Application, & Closures

Darlene Earls 317.233.7302

#### OASIS Technical Help Desk

317.233.7203

#### OASIS Clinical Coordinator

Joyce Elder  
317.233-7203

#### Data Reporting & Aide Registry

Tom Reed 317.233.7541

### Home Health & Hospice Information on ISDH Web Site

- ◆ Directory (with quarterly updates)
  - ◆ Laws/Rules/Regulations (USA & IN)
  - ◆ Licensing Form
  - ◆ Reports
  - ◆ Links to various organizations
- [www.IN.gov/isdh/regsvcs/providers.htm](http://www.IN.gov/isdh/regsvcs/providers.htm)

### The Home Health & Hospice Newsletter

is published by the  
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2 North Meridian Street  
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**Gregory A. Wilson, MD**  
State Health Commissioner

**Michael Hurst, JD**  
Deputy State Health  
Commissioner

**Elizabeth Carroll, JD**  
Assistant Commissioner  
Health Care Regulatory Services

**Mary Azbill, MT**  
Director of Acute Care  
**Lana Richmond, RN**  
Program Director